

### REMARKS

The Official Action dated July 6, 2004 has been carefully considered. Accordingly, the changes presented herein, taken with the following remarks, are believed sufficient to place the present application in condition for allowance. Reconsideration is respectfully requested.

The Examiner asserted that claim 11 was not elected by Applicant. To the contrary, Applicant did include claim 11, and the features shown in Figures 4 and 5, in its election. Claim 11 simply provides that the bottom face of the basket element is curved or angled upward, and this feature applies to *all four* of the species identified by the Examiner in the December 28, 2004, restriction requirement. The Examiner identified the alleged species based on the style of the end-pieces and the base mount (i.e., Figures 3, 6, 7, and 8). The Examiner did not identify any separate species based on the configuration of the bottom face, two embodiments of which are shown in Figures 4 and 5. Figures 4 and 5 were not identified as being part of a separate species, and in fact are part of *each* of the four species identified by the Examiner. The Applicant elected the style of end-piece and base mount shown in Figure 6, and asserted that claim 11 (as well as others) read thereon in his response. The Examiner acknowledged that the Applicant elected group 2 (Figure 6), readable on claims 1-19, in the Office Action dated April 21, 2005, and considered claim 11 *on the merits* in that office action. The Examiner cannot now assert, contrary to his prior actions and statements, that claim 11 is directed towards a non-elected invention. Claim 11 is simply one embodiment of the species of the originally presented and elected invention shown in Figure 6, and thus should be considered on the merits, especially as the Examiner *already* has considered claim 11 on its merits. Reconsideration is respectfully requested.

The Examiner objected to certain informalities in the language of claims 1 and 11. By present amendment, appropriate correction has been made, and the objection has been traversed. Reconsideration is respectfully requested.

Claims 1, 3, 5-7, 9-16, 18, and 19 were rejected under 35 U.S.C. 112, second paragraph, as being indefinite. The Examiner asserted that the meaning of the phrase "each section of each rod is substantially parallel to corresponding sections of the other rods so that two opposing ends of the basket are open" was not clearly understood as Figures 6-8 did not show an opening at the end. The Examiner also asserted that it is not clearly understood as to how "the ends of each rod are affixed to opposite sides of the base mount" as there was never recited "opposite sides of the base mount." The Examiner also asserted that there was no antecedent basis for the loops in claim 19, and that claims 12-16 were vague and indefinite by reciting "one open end" closed by a structural element.

The rejection is traversed, by present amendment, claim 1 is amended to remove the references to open ends and parallel rod sections, and to recite that the base mount has at least two opposing sides. Claim 1 also now describes a box-shaped basket capable of holding two or more objects, with a top formed by said base mount, two opposing ends formed by two end-pieces hingedly attached to said base mount, and a bottom face and two opposing sides formed by a series of three or more generally U-shaped wires or rods each with a first end and a second end and a transverse base section and two parallel side sections, wherein said side sections form the opposing sides of the basket and the transverse base sections form the bottom face of the basket, said wires or rods being affixed at their first and second ends to the opposing sides of the base mount, and further wherein each wire or rod is substantially parallel to and not in contact with the other wires or rods, and further wherein said wires or rods are flexible enough to allow objects to be squeezed between the loops into the basket. As claim 1 as amended is now in allowable form, the dependent claims also are now allowable in present form. Accordingly, the rejection with regard to claims 1, 3, 5-7, 9-16, 18, and 19 is traversed and reconsideration is respectfully requested.

Claims 1, 3, 5-7, 9, 10, 12, 13, 16 and 18 were rejected under 35 USC 102(b) as being anticipated by Griffith, Jr. (2,864,228). The Examiner asserted that Griffith discloses a device for retrieving nuts comprising an elongated handle, a rectangular base mount affixed to one end of the handle, and a box-shaped basket with substantially U-shaped rods being fixed to the first and second ends to the base mount where each rod is parallel to each other and the opposing ends are open. The Examiner further asserted that the base mount comprised two rectangular pieces, that the rods were substantially and removably affixed to one of the base mounts by screws, that the bottom portion of the rod and the vertical end was approximately 90 degrees, that the open ends are closed by a series of rods or at least a single substantially bent rod, and that the rods are spaced apart in an array a distance at least the size of a nut, which has at least the diameter of a standard golf ball.

The rejection is traversed. Claim 1 has been amended to recite a box-shaped basket capable of holding two or more objects, with a top formed by said base mount, two opposing ends formed by two end-pieces hingedly attached to said base mount, and a bottom face and two opposing sides formed by a series of three or more generally U-shaped wires or rods each with a first end and a second end and a transverse base section and two parallel side sections, wherein said side sections form the opposing sides of the basket and the transverse base sections form the bottom face of the basket, said wires or rods being affixed at their first and second ends to the opposing sides of the base mount, and further wherein each wire or rod is substantially parallel to and not in contact with the other wires or rods, and further wherein said wires or rods are flexible enough to allow objects to be squeezed between the loops into the basket. The reference to open ends have been removed, and the limitations of claim 19 have been added. In addition, the nut gatherer of Griffith functions by sliding the basket, which is formed by oval-shaped rings, not U-shaped wires or rods (see column 1, lines 32-41), along the ground so that nuts pass into the front of the device. Nuts are prevented from falling out of the device by picker plates or slats (ref.

18), which are attached along the bottom of the device. Without these slats, nuts would immediately fall out of the device. This is in direct contrast with the present invention, where the objects being retrieved are squeezed through the flexible bars or rods of the basket, and no slates or plates are required to keep the objects in the basket. Applicant also finds no teaching or suggestion in Griffith of end-pieces hingedly attached to the base mount. Further, claims 3, and 12-14 have been canceled. As claim 1 as amended is now in allowable form, the dependent claims also are now allowable in present form. Accordingly, the rejection with regard to claims 1, 3, 5-7, 9, 10, 12, 13, 16 and 18 is traversed and reconsideration is respectfully requested.

Claims 1, 3, 6, 9, 10, 12, 13, 16, 18 and 19 were rejected under 35 USC 102(b) as being anticipated by Touchberry (2,835,099). The Examiner asserted that Touchberry discloses a device for retrieving nuts comprising an elongated handle, a rectangular base mount affixed to one end of the handle, and a box shaped basket made of a series of rods, each substantially U-shaped with a first end and a second end, the ends being fixed to the base mount wherein each rod is parallel to each other and the opposing ends are open, with end-pieces closing the open ends. The Examiner further asserted that the rods are spaced apart in an array at least the size of a nut, which has at least the diameter of a standard golf ball, and that the rods are flexible.

The rejection is traversed. By present amendment, claim 1 has been amended as described above to recite a basket where the top is formed by the base mount and two ends are formed by end-pieces hingedly attached to the base mount. Applicant finds no teaching or suggestion in Touchberry of a base mount forming a top of a basket to hold objects, or end-pieces hingedly attached to the base mount. The serpentine wires (refs. 32, 32') forming the ends of the basket of Touchberry are fixedly secured to the end wire (see col. 1, line 60, through col. 2, line 7). And the pair of elongated vertically spaced and parallel wire frames (16, 18, 20, 22) do not form the top of the basket, as they are described and shown as substantially open (see col. 1, lines 40-54). If the device of Touchberry were inverted, the nuts inside would fall out. This is in

sharp contrast to the present invention, where the base mount forms the top of and encloses the basket as shown in Figure 6. Furthermore, with regard to claim 18, the device of Touchberry is described as being used to pick up pecan nuts (see col. 2, lines 12-39). It is common knowledge that pecan nuts (which are described as being 1.5 to 3.0 cm along the latitudinal axis--see [http://www.efloras.org/florataxon.aspx?flora\\_id=1&taxon\\_id=210000185](http://www.efloras.org/florataxon.aspx?flora_id=1&taxon_id=210000185), and <http://en.wikipedia.org/wiki/Pecan>--which is the key axis for use of the Touchberry device, as seen in Figure 2 thereof) are substantially smaller in diameter than a golf ball (the rules of golf provide that the diameter of a golf ball must not be less than 4.267 cm). Therefore, if the rod spacing of the device of Touchberry is such as to allow pecan nuts to be retained, it must be smaller than the latitudinal diameter of the nuts (i.e., less than 3 cm), and thus smaller than a golf ball (4.267 cm). As claim 1 as amended is now in allowable form, the dependent claims also are now allowable in present form. Accordingly, the rejection with regard to claims 1, 3, 6, 9, 10, 12, 13, 16, 18 is traversed and reconsideration is respectfully requested.

Claims 14 and 15 were rejected under 35 U.S.C. 103(a) as being unpatentable over Griffith, Jr. in further view of Fu (6,481,768). The Examiner asserted that Griffith does not show an end piece or a closing piece hingedly attached to the rod, but that Fu teaches a closing end piece (ref. 221 in Fig. 6), one end being hingedly attached to the mount and the other end being removably attached to the rod end by a clip (ref. 224). The Examiner asserted that it would have been obvious to those skilled in the art to provide a removable end piece or closing piece to be attached to the base mount of the Griffith device as taught by Fu.

The rejection is traversed. Fu does not teach or suggest two end pieces hingedly attached to a base mount. Ref. 221 is not a closing end piece, it is the base mount itself, and thus the *top* of the basket, not the end-pieces (the top of a box cannot also form two opposing ends of the box, at least in the current space-time continuum). As seen in Figure 5, the elongated handle of Fu (ref. 211) is attached to the base mount (ref. 221). While Fu may suggest hingedly attaching the

top of the basket to the basket, it does not teach hingedly attaching the two end pieces of the basket. Furthermore, the configuration of Griffith provides no motivation to combine the hingedly-attached base mount of Fu with the open basket of Griffith. The hingedly-attached base mount of Fu is to provide access to the interior of the basket and remove the balls. Griffith has no such need, as the front of the Griffith device is open (i.e., it has no slats), and nuts thus are easily removed therefrom. There is no need or desire, and thus no motivation, to provide a hinged top or end to the device of Griffith. MPEP 2143.01(I) (the prior art must suggest the desirability of the claimed invention). In fact, providing a hinged end-piece across the front of the device of Griffith would interfere with the operation of the device, and prevent it from being used as designed. The proposed modification cannot change the principle of operation of a prior art reference, or render it unsatisfactory for its intended purpose. MPEP 2143.01(V) & (VI). Accordingly, the rejection with regard to claims 14 and 15 is traversed and reconsideration is respectfully requested.


Claims 14 and 15 were rejected under 35 U.S.C. 103(a) as being unpatentable over Touchberry in further view of Fu (6,481,768). The Examiner asserted that Touchberry does not show an end piece or a closing piece hingedly attached to the rod, but that Fu teaches a closing end piece (ref. 221 in Fig. 6), one end being hingedly attached to the mount and the other end being removably attached to the rod end by a clip (ref. 224). The Examiner asserted that it would have been obvious to those skilled in the art to provide a removable end piece or closing piece to be attached to the base mount of the Griffith device as taught by Fu.

The rejection is traversed. First, as noted above, Fu does not teach or suggest two end pieces hingedly attached to a base mount. Ref. 221 is not a closing end piece, it is the base mount itself, and thus the *top* of the basket, not the end-pieces (the top of a box cannot also form two opposing ends of the box, at least in the current space-time continuum). While Fu may suggest hingedly attaching the top of the basket to the basket, it does not teach hingedly attaching

the two end pieces of the basket. Second, as with Griffith, the configuration of Touchberry provides no motivation or desire to combine the hingedly-attached base mount of Fu with the open basket of Touchberry. The hingedly-attached base mount of Fu is to provide access to the interior of the basket and remove the balls. Touchberry has no such need, as the top of the Touchberry device is open, and nuts thus are easily removed therefrom (e.g., inverting the device causes the nuts to fall out of the basket). There is no need or desire, and thus no motivation, to provide hinged ends to the device of Touchberry. MPEP 2143.01(I) (the prior art must suggest the desirability of the claimed invention). Accordingly, the rejection with regard to claims 14 and 15 is traversed and reconsideration is respectfully requested.

Accordingly, the rejections of claims 1-19 under 35 U.S.C. 112, second paragraph, 102(b) and 103(a) have been traversed, and reconsideration is respectfully requested. It is believed that the above represents a complete response to the rejections, and places the present application in condition for allowance. Reconsideration and an early allowance are requested.

Respectfully submitted,

  
W. Edward Ramage, Reg. No. 50,810  
Baker Donelson Bearman Caldwell &  
Berkowitz, PC  
211 Commerce Street, Suite 1000  
Nashville, TN 37201  
615-726-5771